

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
File Name: 11a0767n.06

No. 10-2072

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

FILED

Nov 15, 2011

LEONARD GREEN, Clerk

BEFORE: GILMAN, ROGERS, and STRANCH, Circuit Judges.

ROGERS, Circuit Judge. This is an appeal from the district court’s dismissal for lack of subject matter jurisdiction. Compressor Engineering Corporation brought a claim in federal court under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227(b)(3), which provides for a private right of action in state court. Intervening precedent from this court compels the conclusion that there was federal-question jurisdiction in this case.

Compressor Engineering Corporation brought suit in federal court after defendants Manufacturers Financial Corporation and Charity Marketing LLC allegedly sent unsolicited facsimile advertisements to Compressor Engineering and at least 39 others. Compressor Engineering did not have an established business relationship with either defendant, and did not give either defendant permission to send Compressor Engineering advertisements by fax. There is no diversity of citizenship between the parties. Compressor Engineering argued that the district court had

jurisdiction under 28 U.S.C. § 1331 and the TCPA, a federal statute. The district court followed the vast majority of federal courts to address this question, as well as an unpublished opinion from this court, *Dun-Rite Construction, Inc. v. Amazing Tickets, Inc.*, No. 04-3216, 2004 WL 3239533 (6th Cir. Dec. 16, 2004), to hold that the TCPA is not a sufficient basis for federal-question jurisdiction.

In a recent published opinion, this court decided squarely that a “district court ha[s] federal-question jurisdiction over the claims under the Telephone Act[.]” *Charvat v. EchoStar Satellite, LLC*, 630 F.3d 459, 463 (6th Cir. 2010), *Charvat* controls the resolution of this appeal, and no other issues are presented.

We therefore REVERSE and REMAND to the district court for further proceedings.

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Leonard Green
Clerk

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Re: Case No. 10-2072, *Compressor Engineering Corp v. Manufacturers Financial, et al*
Originating Case No. : 09-14444

Dear Counsel,

The Court issued the enclosed Opinion today in this case.

Sincerely yours,

s/Sue Burlage
Case Manager
Direct Dial No. 513-564-7012

cc: Mr. David J. Weaver

Enclosure

Mandate to issue